IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3533 OF 2006

Bholabhai Haribhai Damelia @ Patel ...Applicant

vs.

State of Maharashtra & others ...Respondents

Ms Mallika Ingale for the Applicant
Mr.S.R.Shinde, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 4,2006.

P.C.:

1. Heard learned Advocate appearing for the Applicant. The Applicant is the complainant in a private complaint filed against the second to fourth Respondents. The grievance of the Applicant is that instead of passing an order under section 156 (3) of the Code of Criminal Procedure, 1973, the learned Magistrate passed an order adjourning the complaint for verification. The said order was challenged by filing a Revision Application before the Sessions court. Revision Application has been rejected.

2. The learned Advocate for the Applicant has invited my attention to the assertions made in the private complaint filed by the Applicant alleging commission of offences under sections 406, 420, 506 (II) read with section 34 of the Indian Penal Code. She submitted that certain diamonds were entrusted to the second to fourth Respondents only for the purpose of showing the same for approval of the customers.

She submitted that the said Respondents have not returned the said diamonds. The learned Advocate placed reliance on the writing in Gujrati language dated 1st November 2004 and pointed out that the accused persons have disputed the execution of the said writing. She submitted that a case is made out for passing an order under section 156 (3) of the said Code.

3. The finding of the learned Additional Sessions Judge is that the learned Magistrate has exercised the discretion vested in him properly and there was no material irregularity and illegality in the order. It is true that the learned Magistrate could not have heard the accused persons at this stage of the complaint. Merely because the accused persons were heard, the order passed by the learned Magistrate will not become bad.

4. After having gone through the assertions made in the complaint and the documents relied upon by the Applicant, I find that no case is made out for interference with the discretionary order passed by the learned Magistrate.
Application is rejected.

JUDGE